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**Subject: Purchasing Policy**

**Policy No.: 200-0006**

**Effective Date: 07/01/2010 (Approved by Council on 5/24/2010)**

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**BACKGROUND:** On May 24, 2010, the Mayor and Council adopted an ordinance repealing Article V, Purchasing Ordinance of Chapter 2, Administration in the Woodstock Code of Ordinances and replaced it with an ordinance identifying the creation of a “Purchasing Policy” to be included in the Woodstock Council Policy Manual – to be known as CPM #200-0006 – Purchasing Policy.

## **PURCHASING\***

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**\*Charter references:** Centralized purchasing authorized, § 6.41.

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**PURCHASING POLICY ESTABLISHED:** In accordance with provisions of the Charter and Code of Ordinances of the City of Woodstock, Georgia, the City Manager, with approval of the City Council, hereby establishes this Purchasing Policy.

## **DIVISION 1. GENERALLY**

**DEFINITIONS:** For the purpose of this policy the following terms, phrases, and words shall have the meaning given herein unless the context in which they are used clearly requires a different meaning.

### **Sec. 2-251. Definitions.**

*Architect-engineer and land surveying services* means those professional services within the scope of the practice of architecture, professional engineering or land surveying, as defined by the laws of the state.

*Blind trust* means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

*Brand name or equal specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

*Brand name specifications* means a specification limited to one or more items by manufacturers' names or catalogue numbers.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

*Change order* means a written order signed and issued by the purchasing agent, directing the contractor to make changes in the "changes" clause of the contract which authorizes the purchasing agent to order without the consent of the contractor.

*Contract modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

*Confidential information* means any information which is available to an employee because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

*Construction* means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

*Contract* means all types of city agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

*Contractor* means any person having a contract with the city or a using agency thereof.

*Cost reimbursement contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article, and a fee or profit, if any.

*Direct or indirect participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of the purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

*Employee* means an individual drawing a salary or wages from the city, whether elected or not.

*Financial interest* means:

- (1) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100.00 per year, or its equivalent;
- (2) Ownership of 51 percent of any property or business; or
- (3) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

*Gratuity* means a payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

*Immediate family* means a spouse, children, parents, brothers and sisters.

*Invitation for bids* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

*Lowest Responsible Bidder* is determined by focusing primarily on a particular bidder's ability to accomplish the proposed task in a timely and efficient manner. Secondary focus is placed on the price. See Section 3.1.6.1 for criteria.

*Procurement/Purchasing* means the buying, purchasing, renting, leasing or otherwise acquiring of any supplies, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Request for proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

*Responsible bidder or offerer* means a bidder who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment trained manpower, financial resources and credit which will assure good faith performance.

*Responsive bidder* means a bidder who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposal.

*Services* means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance all telephone, gas, water, electrical and power services, laundry and cleaning service, insurance, leases or rentals of all grounds, buildings, offices, space or equipment required by the using entity, or leased or rented by the City to others, the repair or maintenance of equipment or real property owned by, or the responsibility of the City, infrastructure repair, replacement or construction, building construction, building repair or renovation. This term shall not include employment agreements or collective bargaining agreements.

*Specification* means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service or construction item for delivery.

*Supplies* means all property including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or a permanent interest in land.

*Using agency* means any department, commission, board or public agency requiring supplies, services or construction procured pursuant to this article.

**Cross references:** Definitions generally, § 1-2.

**Sec. 2-252. Purpose.**

The purpose of this article is to provide for the fair and equitable treatment of all persons involved in public purchasing by the city, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality of integrity.

**Sec. 2-253. Application of article.**

This article applies to the procurement of supplies, services and construction entered into by the city. When the procurement involves the expenditure of federal assistance or contract funds, the procurement should be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this article shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

**Sec. 2-254. Public access to procurement information.**

(a) Procurement information shall be a public record to the extent provided by law and shall be available to the public upon written request.

(b) *Financial disclosure.* On all contracts entered upon by the city valued in excess of \$50,000.00, the contractor or firm shall provide financial statements for the past three years. In addition, the contractor shall disclose current or potential bankruptcy filings. The disclosure of a bankruptcy filing shall not prevent the city from contracting with said company however; failure to disclose company bankruptcy status shall nullify any contracts entered upon by the city in good faith. This provision shall be incorporated in all contracts with the city valued in excess of \$50,000.00.

**State law references:** Inspection of public records, O.C.G.A. § 50-18-70 et seq.

**Sec. 2-255. Office of purchasing agent.**

(a) *Establishment of the position of purchasing agent.* There is hereby created the position of purchasing agent, who shall be the city's principal public purchasing official.

(b) *Appointment.* The purchasing agent shall be the City Manager or his/her designated representative.

**Sec. 2-256. Authority and duties.**

(a) *Principal public purchasing official.* Except as otherwise provided herein, the purchasing agent shall serve as the principal public purchasing official for the city, and shall be responsible for the procurement of supplies, services, and construction in accordance with this article as well as the management and disposal of supplies.

(b) *Duties.* In accordance with this article and subject to the supervision of the mayor and city council, the purchasing agent shall:

- (1) Procure or supervise the procurement of all supplies, services, and construction needed by the city;
- (2) Exercise direct supervision over the city's central stores and general supervision over all other inventories of supplies belonging to the city;
- (3) Sell, trade, or otherwise dispose of surplus supplies belonging to the city; and
- (4) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the departments using the supplies, services and construction.

(c) *Operational procedures.* Consistent with this article, the purchasing agent shall develop operational procedures relating to the execution of its duties. These may be set forth in a municipal procurement handbook.

**Charter references:** Contracting procedures, § 6.40.

**Sec. 2-257. Delegations to other city officials.**

The purchasing agent may delegate authority to purchase certain supplies, services or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items.

**Sec. 2-258. Appropriation required for governmental funds.**

No purchase of supplies or services not provided for in the annual governmental fund budget shall be made unless by specific order of the City Manager. Once the purchase has been authorized by the Purchasing Agent, the funds shall be immediately encumbered.

**Sec. 2-259. Separation of funds used for special purposes.**

Public funds used for special purposes should be kept separate and not commingled with funds used for general purposes including but not limited to water and sewer funds and those funds received through special county one percent sales taxation.

## **Sec. 2-260. Special Budget Requirements for Utility Funds**

Utility budgets are affected by level of product usage and maintenance requirements. Deemed a necessity for health and sanitation purposes, certain unbudgeted variable and fixed costs may be incurred without further notice. In the case of variable cost product usage (such as water), the City Manager or his/her designee has the authority to authorize purchases beyond annual budget levels. Unbudgeted fixed system maintenance cost requires that the Public Works Director and CFO actively report the project to the City Manager. The City Manager may authorize the repair to the system and report the repair and related cost to the City Council.

## **Sec. 2-261. Unauthorized Purchases**

Except as herein provided, it shall be unlawful for any City employee or official to purchase any supplies or services other than in accordance with these policies.

## **Secs. 2-262--2-280. Reserved.**

## **DIVISION 2. ETHICS IN CONTRACTING\***

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**\*State law references:** Ethics in Government Act, O.C.G.A. § 21-5-1 et seq.; code of ethics and conflict of interest, O.C.G.A. § 45-10-1 et seq.

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## **Sec. 2-281. Criminal penalties.**

To the extent that violations of the ethical standards of conduct set forth in this chapter constitute violations of the state criminal code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this subdivision. Criminal, civil and administrative sanctions against employees or non-employees which are in existence on the effective date of the ordinance from which this section derives shall not be impaired.

## **Sec. 2-282. Employee conflict of interest.**

(a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows or should know that:

- (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
- (2) Any other person, business or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

(b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

**Sec. 2-283. Gratuities and kickbacks.**

(a) *Gifts and Gratuities.* Officers and employees of the City are expressly prohibited from accepting from any person, firm, corporation or organization, any rebate or gift that would directly affect the purchase of goods or services for the City, except where given for the use or benefit of the City.

(b) *Contract clause.* The prohibition against gifts and gratuities prescribed in this section shall be conspicuously set forth in every contract and solicitation thereof.

**Sec. 2-284. Prohibition against contingent fees.**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**Sec. 2-285. Contemporaneous employment prohibited.**

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

**Sec. 2-286. Waivers from contemporaneous employment prohibition and other conflicts of interest.**

The city council may grant a waiver from section 2-282 or section 2-285 upon making a determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform the procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interest of the city.

**Sec. 2-287. Use of confidential information.**

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**Sec. 2-288. Sanctions.**

(a) *Employees.* The city manager may impose any one or more of the following sanctions on a city employee for violations of the ethical standards in this division:

- (1) Oral or written warnings or reprimands.
- (2) Suspension with or without pay for specified periods of time.
- (3) Termination of employment.

(b) *Non-employees.* The city council may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards.

- (1) Written warnings or reprimands.
- (2) Termination of contracts.
- (3) Debarment or suspension.

**Sec. 2-289. Recovery of value transferred or received in breach of ethical standards.**

(a) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this article by a city employee or a non-employee may be recovered from both city employee and non-employee.

(b) *Recovery of kickbacks by city.* Upon showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

**Secs. 2-290--2-310. Reserved.**



### **DIVISION 3. SOURCE SELECTION**

**PURCHASING PROCEDURES:** The Purchasing Agent shall be responsible to supervise the acquisition or contracting of all supplies and contractual services requisitioned by any City Department or its divisions in accordance with purchasing procedures prescribed herein.

#### **Sec. 2-311. Competitive sealed bidding.**

(a) *Formal Competitive Bids.* When the estimated cost exceeds twenty five thousand dollars (\$25,000), all supplies and contractual services except as otherwise provided for herein, shall be acquired by formal competitive bid from the lowest responsible bidder, after due notice inviting proposals. Formal competitive bidding may be eliminated by the City if a Statewide Contract, County Contract or other qualified competitively bid contract is used.

(b) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable for the procurement.

(c) *Public notice.* All contracts to be let by public bid should be advertised for competitive sealed bids. The public advertisement shall be inserted once in such newspapers wherein the county sheriff's sales are advertised or in such newspapers or other publications, or both, as well to ensure adequate publicity, the insertion to be at least two weeks prior to the opening of the sealed bids.

(d) *Bid opening.* Bids shall be sealed and submitted to the Purchasing Agent. The bid envelope shall state "Bid" and "Bid Number" on its face. Bid opening shall be in City building and shall be opened publicly at the time and place designated in the invitation for bids. A record of bids shall be kept by the Purchasing Agent. The record and each bid shall be open to public inspection in accordance with this article and applicable state law.

(e) *Insurance and Bonds.* All firms selected as being adequately qualified must provide evidence of insurance covering their entire scope of operation for any "error or omissions" resulting from their endeavors, to include general liability and workers' compensation insurance as required by state law. The amounts of such insurance coverage shall be commensurate with the magnitude of the project under consideration and shall be established by the Purchasing Agent. Should timely performance be a matter of importance to the City, the firm selected may be requested to furnish an acceptable performance bond and/or such other form of surety as may be mutually agreed upon to insure adherence to a mutually agreed upon time schedule.

(f) *Bid acceptance and bid evaluation.* Bids may be unconditionally accepted without alteration or correction. Bids should be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as

inspection, testing, quality, workmanship, delivery and suitability for a particular purpose and with criteria established by this policy.

(g) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal or inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate.

(h) *Award.* Upon recommendation of the City Manager, all formal bid contracts shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

#### **Sec. 2-312. Lowest responsible bidder criteria.**

Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, the following list shall be considered:

- (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (d) The performance quality of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (f) The adequacy of the bidder's financial resources and ability to perform the contract or service;
- (g) The ability of the bidder to provide maintenance and service for the use of the subject of the contract; and
- (h) The bidder's previous experience with the City of Woodstock.
- (i) Lowest price.

#### **Sec. 2-313. Competitive sealed proposals.**

(a) *Conditions for use.* When the purchasing agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the competitive sealed proposals method.

- (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided for bids.
- (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the identity of any offerer or the contents of any proposals to competing offerers during the process of negotiation. A register of proposals shall be prepared containing the name of each offerer, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.
- (e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors.
- (f) *Discussion with responsible offerers and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerers or of any information derived from proposals submitted by competing offerers.
- (g) *Negotiation of Fees.* Once the departments and Purchasing Agent have selected and rated those firms adequately qualified for a specific project and have reviewed the fee statements, the departments and Purchasing Agent shall negotiate a contract with the highest rated firm at terms determined to be fair and reasonable to the City. In making this decision, they shall take into account the estimated value of the services to be rendered, the scope, complexity and professional nature thereof. Should a satisfactory contract with the firm become too problematical, the departments and Purchasing Agent may rebid the project or undertake negotiations with the second rated firm. Failing that, they may rebid the project or undertake negotiations with the third rated firm. All contracts shall be approved to form by the City Attorney
- (h) *Award.* Award shall be made to the responsible offerer whose proposal is determined to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Reference Sec. 2-311 (i).

**Sec. 2-314. Sole source of procurement.**

- (a) *Generally.* A contract may be awarded without competition when the purchasing agent determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- (b) *State or county contracts for procurement.* Where the state or county takes bids on certain items and it is determined that the purchase of these items is to the best advantage of the city, then it shall be the duty of the purchasing agent to use such bids. Nothing herein prohibits the bidding for any of these items if it can be reasonably concluded that the acceptance of local bids would be to the best advantage and interest of the city.
- (c) *Statewide Contracts.* By leveraging the state's purchasing power, Georgia State Purchasing has established competitive statewide contracts for a wide variety of products, services, and equipment. State and local governments can benefit from the convenience and competitive pricing of these pre-established contracts. Contracts include commonly used commodities such as office furniture, motor vehicles, natural gas, liquid petroleum, paint, ammunition, asphalt, and many other commodities and services. The City of Woodstock may use these contracts in lieu of competitive bids.

**Sec. 2-315. Formal competitive bids impracticable.**

Services for which it is impractical or impossible to obtain competitive bids because of the specialized and professional nature of these services shall be affected in accordance with the following procedures.

**Sec. 2-316. Waiver of competition.**

Waivers of competition may be authorized by the City Manager when the services or items are:

- (a) A single source item;
- (b) Must meet compatibility requirements with existing equipment owned by the City or by a contracted third party;
- (c) A specialized service with only one vendor available; or
- (d) A product or service is unique and established as one of a kind.

(e) With approval by City Council, professional services such as attorney, consultant or any other professional serving in a confidential roll to the City may be contracted based solely on demonstrated competence and qualifications.

(f) The City can benefit from the convenience and competitive pricing of State pre-established contracts known as State-wide contracts, or any other competitively bid contract if applicable.

**Sec. 2-317. Preferential treatment.**

Local vendors shall not be granted preferential treatments except if all bids received are for the same price, quality and service.

**Sec. 2-318. Purchases.**

(a) *Bids/price quotations.* The following dollar amounts shall be applied in determining the process to be used in obtaining bids/price quotations:

TABLE INSET:

Up to \$1,000.00	Verbal quotation
\$1,001.00--\$25,000.00	Written quotation
Over \$25,000.00	Request for Proposals or Sealed bids

(b) *Approval.* The following approved authority shall apply to the expenditures of city monies:

TABLE INSET:

Up to \$25,000.00	City manager, with a monthly summary to the mayor and city council on all budgeted expenditures over \$5,000.00.
Over \$25,000.00	Mayor and city council.
Unbudgeted items over \$5,000.00	Mayor and city council.

(c) *Decentralized Purchases – Under \$1,000.* At the discretion of, and subject to, the review and approval of the Purchasing Agent, Department heads or their authorized representatives may affect purchases in amounts not to exceed \$1,000.00. The Purchasing Agent shall issue such rules and regulations and prescribe such forms as he/she deems necessary to control such purchases, subject to the City Manager's approval. The Purchasing Agent may also permit exceeding this monetary limitation where price, terms, conditions and contractors have been predetermined by establishing open-end (estimated requirement type) contracts.

(d) *Purchases – Exceeding \$1,000 and Under \$25,000.* Negotiated purchases exceeding \$1,000 but not exceeding \$25,000 in total cost will be supported by a record of price quotation from at least three (3) competitive sources or adequate explanations justifying the absence of such competition. Such quotation may be obtained in writing, verbally, or by such other means as may be prescribed by the Purchasing Agent. Acquisition must be approved by City Manager, prior to purchase.

(e) *Purchases – Exceeding \$25,000.* Competitive bid/request for proposal and negotiated purchases exceeding \$25,000 in total cost will be in writing and processed as described in this policy except that, prior to purchase, final approval must be from City Council.

(f) *Requisition.* All purchases involving the immediate encumbrance of City funds shall be made only on a written requisition submitted by the department to the Purchasing Agent.

(1) Each individual department may contact various vendors to assist in identifying product specification and estimated cost.

(2) Only the Purchasing Agent or other authorized delegate may trigger the transaction and make the purchase with the vendor.

(g) *Revisory Power in Agent.* The Purchasing Agent shall examine each requisition and shall have the authority to revise it as to quantity, selected vendor or estimated cost; revisions shall be only with the concurrence of the using department or, if agreement cannot be reached, with authority of the City Manager.

#### **Sec. 2-319. Cooperative purchasing.**

The Director or Purchasing Agent shall have the authority to join other units or government (federal, state, county, municipal subdivisions, including quasi-municipal agencies) in cooperative purchasing plans when the best interests of the City would be served thereby and such action is in accordance with and pursuant subject to applicable state law.

#### **Sec. 2-320. Purchasing card program.**

Upon the recommendation of the department head, and subject to, the review and approval of the City Manager, departments' may affect purchases using City of Woodstock department credit cards in conformity with the City Credit Card Policy and applicable sections of this policy. Unless approved by the City Manager, the amount of any one purchase shall not exceed \$1,000.00 per transaction except in instances of approved travel. The City Manager shall issue

such rules and regulations and may prescribe such forms as he/she deems necessary to control such purchases. The Department Credit Cards shall be used for the sole benefit of the City of Woodstock.

**Sec. 2-321. Emergency procurement.**

(a) Notwithstanding any other provisions of this title, the City Manager may make or authorize others to make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare or safety; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. The City Manager shall provide information to the mayor and city council on any emergency procurement as soon as practical, or in no case later than the next regularly scheduled council meeting after the emergency procurement has been authorized.

**Sec. 2-322. Cancellation of invitations for bids or requests for proposals.**

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city.

**Sec. 2-323. Rejection of bids.**

The Purchasing Agent, upon advice of the Chief Financial Officer or City Manager, shall have the authority to reject any and all bids when bids are deemed non-responsive, token, collusive or otherwise non-acceptable, and/or such action is in the best interest of the City.

**Sec. 2-324. Disbarment of bidders.**

The Purchasing Agent may authorize the disbarment of a bidder/vendor from bidding on City contracts for up to twelve (12) months upon the formal recommendation of the City Manager and in accordance with procedures set forth. A bidder/vendor may be disbarred permanently with approval by City Council.

**Sec. 2-325. Grounds for bidders/ Vendor disqualification.**

- (a) Default on their bid, quotation, contract or purchase order;
- (b) Failure to comply with specification of contract documents;
- (c) Failure to supply the item as required by the specifications.
- (d) Documented history of poor performance.

- (e) Failure to have successfully performed work at an acceptable level for the City of Woodstock.
- (f) Any other conduct which warrants disbarment by the City of Woodstock.

**Sec. 2-326. Disqualified bidder/Vendor reinstatement.**

Bidders/vendors may apply for reinstatement after period of disbarment has elapsed. Bidders/vendors who have been permanently disbarred by City Council may only be reinstated by the City Council.

**Sec. 2-327. Maximum practicable competition.**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the city by architects, engineers, designers and draftsmen.

**Sec. 2-328. Brand name purchases.**

The purchasing agent may elect purchase of a brand name product or service when the goods comprise a major brand system, program, or service previously selected by the city and due to operational effectiveness, future enhancements or additions, or maintenance and storage of spare parts preclude the mixing of brands, manufactures, etc.

**Sec. 2-329. Modification of specifications.**

Once a contract is bid and awarded by the Purchasing Agent in accordance with this division, the city reserves the right to further negotiate all terms of the contract if the city determines that it is in the city's best interest to do so without the necessity of rebidding any such contract; provided, however, that any negotiations permitted hereunder shall not result in a variance of the price term exceeding ten percent of the original bid price.

**Sec. 2.330. Unacceptable, noncompetitive or non responsive bids.**

When bids received pursuant to this policy are unreasonable or unacceptable as to terms and conditions, are noncompetitive, are non responsive or the lowest responsible bid exceeds available funds and it is determined that time or other circumstances will not permit or justify the delay required to re-solicit competitive bids, a contract may be negotiated pursuant to this section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where bids received are noncompetitive or the lowest responsible bidder exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

**Secs. 2-331--2-340. Reserved.**



## **DIVISION 4. CONTRACTS**

### **Sec. 2-341. Authority.**

(a) *General.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used.

(b) *Authority.* All contracts shall be reviewed by the city attorney prior to submittal. All contracts for up to one year of service and less than \$25,000 shall be awarded after approval by the City Manager and shall be signed by the Mayor. All contracts wherein the fee exceeds \$25,000 shall be awarded after approval by the City Council and shall be signed by the Mayor. Contracts shall no bind the City unless reduced in writing and approved.

(c) *Amendments to Contracts.* No City employee shall have the authority to authorize amendments to contracts or additional work under a contract which has been approved by the City council. Additionally no City employee shall have the authority to authorize changes to the original scope of a contract approved by the City Council. Notwithstanding the forgoing, amendments to contracts may be authorized by the City Manager if such amendments are to comply with the original intent of the contract, are made necessary by modifications not known at the time the contract was approved, and do not increase the price of the contract or decrease the product or services provided to the City. For example, if a product to be provided was specified in the contract and such product thereafter becomes unavailable, the City Manager may, upon request from a City employee, authorize a comparable product to be used in place of the product that became unavailable.

(d) *Contract Process.* The Purchasing Agent shall be responsible for having contracts developed, reviewed by the City Attorney, and putting contracts on City Council Agenda for approval.

(e) *Contract Retention.* The City Clerk shall maintain all original contracts. The Purchasing Agent and respective Department Head shall be furnished with copies of fully executed contracts.

**Charter references:** Contracting procedures, § 6.40.

### **Sec. 2-342. Contract clauses and administration.**

(a) *Contract clauses.* All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the

contract. The purchasing agent, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts.

(b) *Administration.* The department head, unless otherwise designated by the City Manager, shall develop a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

#### **Sec. 2-343. Right to inspect plant.**

The city manager or his designee or any elected official may, at his/her discretion and with no prior notification, inspect the part of the plant, place of business or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

#### **Sec. 2-344. Right to audit records.**

The city manager or his designee or any elected official may, at his/her discretion and with no prior notification, audit the books and records of any contractor or a subcontractor to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data, or to the performance of such contract or sub-contract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

#### **Sec. 2-345. City procurement records.**

(a) *Bid file.* All determinations and other written records pertaining to the solicitation, and award of a contract shall be maintained for the city in a bid file by the purchasing agent.

(b) *Retention of procurement records.* All procurement records shall be retained and disposed of by the city in accordance with records retention guidelines and schedule approved by the City Council and applicable state laws.

#### **Secs. 2-346--2-370. Reserved.**

### **DIVISION 5. PROCUREMENT OF SERVICES**

#### **Sec. 2-371. Responsibility for selection of methods of construction contracting management.**

The city manager and department head responsible for the construction project shall have discretion, in accordance with terms and conditions of this policy, to select the appropriate method of construction contracting management for a particular project. In determining which

method to use, the city manager shall consider the city's requirements, its resources, and the potential contractor's capabilities.

**Sec. 2-372. Bid security.**

(a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing agent to exceed \$25,000.00, when deemed necessary by the Purchasing Agent or if required by federal, state or grant regulations.. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the city. Nothing in this section shall prevent the requirement of such bonds on construction contracts under \$25,000.00 when the circumstances warrant.

(b) *Amount of bid security.* Bid security shall be in an amount equal to at least five percent of the amount of the bid.

(c) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

(d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award no action shall be had against the bidder or the bid security.

(e) *Bid Surety.* Surety of the unsuccessful bidders shall be returned by the Purchasing Agent after the bid has been awarded and appropriate contracts have been fully executed, if required. A successful bidder shall forfeit any surety required by the Purchasing Agent upon failure on his/her part to enter into a contract within ten (10) days after the award unless otherwise permitted.

**Sec. 2-373. Contract performance and payment bonds.**

(a) *When required; amounts.* When a construction contract is awarded in excess of \$25,000.00, the appropriate bonds (performance bond and payment bond) and security shall be delivered to the city and shall become binding on the parties upon the execution of the contract.

(b) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds.

**Sec. 2-374. Architect-engineer and land surveying services.**

It is the policy of the city to announce publicly all requirements for architect-engineer and land surveying services where the cost of the service shall exceed \$5,000.00, and to negotiate such

contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-engineer and land surveying services, the purchasing agent shall request firms to submit a statement of qualifications and performance data.

**Secs. 2-375--2-400. Reserved.**

## **DIVISION 6. SURPLUS OF PROPERTY**

### **Sec. 2-401. Sale of property.**

The Purchasing Agent shall be responsible for the sale or disposal of all municipal property (real or personal) which is no longer used or has become obsolete, worn out or scrapped and declared as surplus property by City Council, subject to state law regarding disposal of surplus property.

### **Sec. 2-402. Notice.**

Department heads of all using agencies shall notify the Purchasing Agent, at such times and in such form as Purchasing Agent may prescribe of all surplus items available within their respective department. All items to be declared as surplus property shall be approved by City Council.

### **Sec. 2-403. Public notification.**

All surplus items to be sold by public auction, sealed bid or any other manner deemed appropriate should be advertised.

### **Sec. 2-404. Transfer.**

The City Manager shall have the authority to transfer surplus property to other using departments within the City.

### **Sec. 2-405. Sale procedure.**

All sales over an estimated \$100.00 shall be sold at a public auction or through formal competitive bids, to include online auctions available to the general public. Sales estimated at less than \$100.00 shall be conducted in the most economical manner and in the best interest of the City.

### **Sec. 2-406. Donation.**

All items which might be donated to another governmental entity or non-profit organization shall require prior approval of the City Council.

**Secs. 2-407—2-500. Reserved.**